

Certificate of Electronic Submission
I hereby certify that this correspondence is being
submitted electronically to the U.S. Patent
and Trademark Office on August 21, 2006
(Date of Submission)

FRANK C. NICHOLAS (33,983)
Name of applicant, assignee or registered representative

/Frank C. Nicholas/
Signature

August 21, 2006
Date of Signature

PATENT
Case No. 1250/4

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:)	
)	
MICHAEL A. GREENBERG)	
)	Examiner: FELTEN, DANIEL S.
Serial No.: 09/922,240)	
)	Group Art Unit: 3624
Filed: AUGUST 3, 2001)	
)	
For: METHOD AND SYSTEM FOR)	
EXCHANGING COMMODITIES)	
ONLINE)	

REPLY BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows:

TABLE OF CONTENTS

	<u>Page</u>
1. REAL PARTY IN INTEREST.....	3
2. RELATED APPEALS AND INTERFERENCES.....	4
3. STATUS OF CLAIMS.....	5
4. STATUS OF AMENDMENTS.....	6
5. SUMMARY OF CLAIMED INVENTION.....	7
6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	8
7. ARGUMENT.....	9
8. CLAIMS APPENDIX.....	18
9. EVIDENCE APPENDIX.....	None
10. RELATED PROCEEDINGS APPENDIX.....	None

1. REAL PARTY IN INTEREST

A statement regarding the real party in interest is contained in the Appeal Brief
filed April 4, 2006.

2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

A statement regarding the status of claim is contained in the Appeal Brief filed April 4, 2006.

4. STATUS OF AMENDMENTS

A statement regarding the status of the amendments is contained in the Appeal
Brief filed April 4, 2006.

5. SUMMARY OF THE INVENTION

A statement regarding the summary of the invention is contained in the Appeal
Brief filed April 4, 2006.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A statement regarding the grounds of rejection to be review on appeal is contained in the Appeal Brief filed April 4, 2006.

7. ARGUMENT

OBVIOUSNESS. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, MPEP §2143.

Walker. *Walker* teaches a method and apparatus for prospective buyers of goods or services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers to bind a buyer to a contract based on the buyer's purchase offer. See, *Walker* at column 8, lines 27-41. To this end, *Walker* allows a buyer to submit a conditional purchase offer ("CPO") that will either be accepted or rejected by a seller as is wherein the system of *Walker* does not adjust the CPO for any reason. Thus, upon the CPO being communicated to a seller, the seller will only bind the buyer to the CPO if the CPO covers the seller's total cost, including shipping, of the goods or services.

Conversely, *Walker* allows a seller to submit a conditional counteroffer that a buyer may accept or reject as is wherein the system of *Walker* does not adjust the CPO for any reason. In fact, there would never be a need for the system of *Walker* to adjust a

seller's conditional counteroffer because a seller would develop the conditional counteroffer inclusive of the seller's total cost, including shipping, of the goods or services.

GROUP 1: Claims 1-3. The Appellant respectfully asserts that *Walker* teaches away from the combination of *Walker* and *Pool* as proposed by Examiner Felten by eliminating any need to adjust a buyer's CPO or a seller's counteroffer based on shipping costs as required by claims 1-3 and any modification of *Walker* to the contrary in view of *Pool* would improperly change the principle operation of *Walker* to allow buyers and sellers to submit non-adjustable CPO and counteroffers. Specifically, *Walker* teaches away from "adjusting the specified price based on shipping costs for shipping the commodity from the seller to the buyer" and "transferring the adjusted price to the buyer over a computer network for displaying by a remote client" as recited in independent claim 1; "adding the shipping costs to the specified price to produce the adjusted price" as recited in dependent claim 2; and "receiving a shipping destination from the buyer", "receiving a shipping origin from the seller", "computing the shipping costs as a function of the distance between the shipping destination and the shipping origin" and "adding the shipping costs to the specified price to produce the adjusted price" as recited in dependent claim 3.

Withdrawal of the rejection of claims 1-3 under §103(a) as being unpatentable over *Walker* in view of *Pool* is therefore respectfully requested.

O'Neil. *O'Neil* teaches a method of trading products that is not based on matching of offers and bids, a receiving an offer and/or a bid according to a predetermined contract, and an adjusting of a buyer market prices based on shipping destination and a seller market prices based on the shipping origination. In fact, any modification of *O'Neil* to trade products according to a predetermined contract, and an adjusting of a buyer market prices based on shipping destination and a seller market prices based on the shipping origination would improperly change the principle operation of *O'Neil*.

Specifically, as illustrated in FIG. 16, *O'Neil* teaches a path 800 where a seller of a product is able to provide inventory data of the product that is not in accordance with a predetermined contract because bid and offer data at this point has not been generated, and a path 802 wherein a buyer is able to query (830) and/or request (846) one or more offers from the sellers for the product based on the inventory data that is not in accordance with a predetermined contract, because the buyer has the flexibility in its query and request to formulate the contract based on the inventory data prior to an execution of a sale transaction (852) or a denial of the buyer request (850). See, O'Neil at column 34, line 6 to column 35, line 65. Thus, a modification of *O'Neil* to have the seller provide inventory data in accordance with a predetermined contract and to have the buyer provide queries and requests in accordance with a predetermine contract eliminates the advantages of in the flexibility afforded to sellers in providing inventory data and

buyers in querying and requesting offer data based on the inventory data. See, O'Neil at column 2, line 1 to column 4, line 50.

Furthermore, as illustrated in FIG. 19, a calculation of delivery cost involves the use of freight calculation data from a seller (968) or the use of freight calculation data from a buyer (966), but not both. See, O'Neil at column 37, line 64 to column 39, line 27. As such, *O'Neil* does not involve an adjustment of both seller offer data based on freight calculation data from the seller and an adjustment of buyer request based on the freight calculation data from the buyer. Moreover, a modification of *O'Neil* to involve such adjustments eliminates an advantage of *O'Neil* in allowing a buyer to selectively provide freight calculation data of the buyer and a seller to selectively provide freight calculation data of the seller (954/956) because it would have to be mandatory to receive both sets of freight calculation data in order to determine delivery costs and then it would have to required to use both sets of freight calculation data in contradiction to determination of which data to use (964).

GROUP 2: Claims 4-30. The Appellant respectfully asserts that *O'Neil* teaches away *O'Neil* teaches away from “discounting the bid based on shipping costs for shipping the commodity from the seller to a buyer” and “transferring the discounted bid to the seller over a computer network for displaying by a remote terminal” as recited in independent claim 4; “subtracting the shipping costs from the bid to produce the discounted bid” as recited in dependent claim 5; and “receiving a shipping destination

from the buyer", "receiving a shipping origin from the seller", "determining the shipping costs based on the shipping destination and shipping origin" and "subtracting the shipping costs from the bid to produce the discounted bid" as recited in dependent claim 6; "adjusting the specified prices based on shipping costs associated with a destination specified by the buyer", "determining a best offer from the adjusted prices", "determining a source location corresponding to the best offer price", "determining a best bid corresponding to the source location", "adjusting the best bid based on the shipping cost between the source location and the destination" and "transferring the adjusted best bid and the best offer to the buyer over a computer network for display by a networked host" as recited in independent claim 7; "computing the shipping cost as a function of the distance between the destination and the source location" as recited in dependent claim 8; "computing the shipping cost as a function of a predetermined freight matrix" as recited in dependent claim 9; "adjusting the bids based on shipping costs associated with a source location specified by the seller", "determining a best bid from the adjusted bids", "determining a shipping destination corresponding to the best bid", "determining a best offer corresponding to the shipping destination", "adjusting the best offer based on the shipping cost between the source location and the shipping destination", and "transferring the adjusted best offer and the best bid to the seller over a computer network" as recited in independent claim 10; "computing the shipping cost as a function of the distance between the destination and the source location" as recited in dependent claim 11; "computing the shipping cost as a function of a predetermined freight matrix" as recited

in dependent claim 12; “means for matching the bid to the offer to generate a transaction” as recited in dependent claim 13; “a buyer interface for displaying a menu for selecting a shipping destination and for displaying a table identifying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, the buyer market prices being adjusted based on the shipping destination”, and “a seller interface for displaying a menu for selecting a shipping origination and for displaying a table identifying the commodity contracts and corresponding seller market prices for the commodity contracts, the seller market prices being adjusted based on the shipping origination” as recited in independent claim 14; “wherein at least one of the buyer market prices comprises a best offer and a best bid” as recited in dependent claim 15; “wherein the best offer is computed by adding to one or more offers the cost of shipping between a respective shipping origin and the shipping destination, whereby generating one or more adjusted offers, and then selecting the lowest adjusted offer to be the best offer” as recited in dependent claim 16; “wherein the best bid is computed by determining a shipping origin corresponding to a best offer, determining a highest bid available to a seller at the shipping origin, and adjusting the highest bid based on the shipping cost between the shipping origin and the shipping destination to get the best bid” as recited in dependent claim 17; “wherein each of the seller market prices comprises a best offer and a best bid” as recited in dependent claim 18; “wherein the best bid is computed by subtracting from one or more bids the cost of shipping between a respective shipping destination and a shipping origin, whereby generating one or more adjusted bids, and then selecting the

lowest adjusted bid to be the best bid” as recited in dependent claim 19; “wherein the best offer is computed by determining the shipping destination corresponding to a best bid, determining a lowest offer available to a buyer at the shipping destination, and adjusting the lowest offer based on the shipping cost between the shipping origin and the shipping destination to get the best offer” as recited in dependent claim 20; “means for displaying a menu for selecting a shipping destination”, “means for displaying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, the buyer market prices being adjusted based on the shipping destination”, “means for displaying a menu for selecting a shipping origination”, and “means for displaying the commodity contracts and corresponding seller market prices for the commodity contracts, the seller market prices being adjusted based on the shipping origination” as recited in dependent claim 21; and “a buyer screen for displaying a menu for selecting a shipping destination and for identifying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, each of the buyer market prices comprising a best offer and a best bid, wherein the best offer is computed by adding to one or more offers the cost of shipping between a respective shipping origin and the shipping destination, whereby generating one or more adjusted offers, and then selecting the lowest adjusted offer to be the best offer, wherein the best bid is computed by determining the shipping origin corresponding to the best offer, determining a highest bid available to a seller at the shipping origin, and adjusting the highest bid based on the shipping cost between the shipping origin and the shipping destination to get the best

bid”, “a seller screen for displaying a menu for selecting a shipping origin and for identifying the commodity contracts and corresponding seller market prices for the commodity contracts, each of the seller market prices comprising a best offer and a best bid, wherein the best bid is computed by subtracting from one or more bids the cost of shipping between a respective shipping destination and the shipping origin, whereby generating one or more adjusted bids, and then selecting the lowest adjusted bid to be the best bid, wherein the best offer is computed by determining the shipping destination corresponding to the best bid, determining a lowest offer available to a buyer at the shipping destination, and adjusting the lowest offer based on the shipping cost between the shipping origin and the shipping destination to get the best offer” as recited in independent claim 27.

Withdrawal of the rejection of claims 4-30 under §103(a) as being unpatentable over *O'Neil* is therefore respectfully requested.

Dated: **August 21, 2006**

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113

Respectfully submitted,

/Frank C. Nicholas/
Frank C. Nicholas
Registration No. 33,983
Attorney for Applicant

CLAIMS APPENDIX

1. A method for providing a commodity offer price to a buyer, comprising:
receiving an offer to sell a commodity according to a predetermined contract at a specified price;
adjusting the specified price based on shipping costs for shipping the commodity from the seller to the buyer; and
transferring the adjusted price to the buyer over a computer network for displaying by a remote client.
2. The method of claim 1, wherein the step of adjusting includes adding the shipping costs to the specified price to produce the adjusted price.
3. The method of claim 1, further comprising:
receiving a shipping destination from the buyer;
receiving a shipping origin from the seller;
computing the shipping costs as a function of the distance between the shipping destination and the shipping origin; and
adding the shipping costs to the specified price to produce the adjusted price.
4. A method for providing a bid to a seller, comprising:

receiving a bid to purchase a commodity according to a predetermined contract;
discounting the bid based on shipping costs for shipping the commodity from the seller to a buyer; and

transferring the discounted bid to the seller over a computer network for displaying by a remote terminal.

5. The method of claim 4, wherein the step of discounting includes subtracting the shipping costs from the bid to produce the discounted bid.

6. The method of claim 4, further comprising:

receiving a shipping destination from the buyer;
receiving a shipping origin from the seller;
determining the shipping costs based on the shipping destination and shipping origin; and
subtracting the shipping costs from the bid to produce the discounted bid.

7. A method of providing a best bid and a best offer to a buyer, comprising:
receiving one or more offers to sell a commodity according to a predetermined contract at one or more specified prices;
adjusting the specified prices based on shipping costs associated with a destination specified by the buyer;

determining a best offer from the adjusted prices;
determining a source location corresponding to the best offer price;
receiving one or more bids to purchase the commodity;
determining a best bid corresponding to the source location;
adjusting the best bid based on the shipping cost between the source location and
the destination; and
transferring the adjusted best bid and the best offer to the buyer over a computer
network for display by a networked host.

8. The method of claim 7, further comprising:
computing the shipping cost as a function of the distance between the destination
and the source location.
9. The method of claim 7, further comprising:
computing the shipping cost as a function of a predetermined freight matrix.
10. A method of providing a best bid and a best offer to a seller, comprising:
receiving one or more bids to purchase a commodity according to a predetermined
contract;
adjusting the bids based on shipping costs associated with a source location
specified by the seller;

determining a best bid from the adjusted bids;
determining a shipping destination corresponding to the best bid;
receiving one or more offers to sell the commodity;
determining a best offer corresponding to the shipping destination;
adjusting the best offer based on the shipping cost between the source location
and the shipping destination; and
transferring the adjusted best offer and the best bid to the seller over a computer
network.

11. The method of claim 10, further comprising:
computing the shipping cost as a function of the distance between the destination
and the source location.

12. The method of claim 10, further comprising:
computing the shipping cost as a function of a predetermined freight matrix.

13. A system for exchanging commodities, comprising:
means for permitting a seller to enter an offer for selling a commodity according
to a predetermined contract;
means for permitting a buyer to enter a bid for purchasing the commodity;
means for matching the bid to the offer to generate a transaction;

means for notifying a transportation partner of the transaction so that the transportation partner can arrange pick-up and delivery of the commodity; and

means for notifying a credit clearinghouse of the transaction so that the clearinghouse can arrange to receive payment from buyer and make payment to the seller.

14. An exchange system, comprising:

a buyer interface for displaying a menu for selecting a shipping destination and for displaying a table identifying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, the buyer market prices being adjusted based on the shipping destination; and

a seller interface for displaying a menu for selecting a shipping origination and for displaying a table identifying the commodity contracts and corresponding seller market prices for the commodity contracts, the seller market prices being adjusted based on the shipping origination.

15. The exchange system of claim 14, wherein at least one of the buyer market prices comprises a best offer and a best bid.

16. The exchange system of claim 15, wherein the best offer is computed by adding to one or more offers the cost of shipping between a respective shipping origin and the

shipping destination, whereby generating one or more adjusted offers, and then selecting the lowest adjusted offer to be the best offer.

17. The exchange system of claim 15, wherein the best bid is computed by determining a shipping origin corresponding to a best offer, determining a highest bid available to a seller at the shipping origin, and adjusting the highest bid based on the shipping cost between the shipping origin and the shipping destination to get the best bid.

18. The exchange system of claim 14, wherein each of the seller market prices comprises a best offer and a best bid.

19. The exchange system of claim 18, wherein the best bid is computed by subtracting from one or more bids the cost of shipping between a respective shipping destination and a shipping origin, whereby generating one or more adjusted bids, and then selecting the lowest adjusted bid to be the best bid.

20. The exchange system of claim 18, wherein the best offer is computed by determining the shipping destination corresponding to a best bid, determining a lowest offer available to a buyer at the shipping destination, and adjusting the lowest offer based on the shipping cost between the shipping origin and the shipping destination to get the best offer.

21. The exchange system of claim 14, further comprising:

a seller order entry interface, operatively associated with the seller interface, permitting a seller to enter an offer for selling a commodity according to a predetermined contract; and

a buyer order entry screen, operatively associated with the seller interface, permitting a buyer to enter a bid for purchasing the commodity.

22. The exchange system of claim 21, further comprising:

a transaction generator, operatively associated with the seller order and buyer order interfaces, for matching the bid to the offer to generate a transaction.

23. The exchange system of claim 22, further comprising:

a delivery interface, operatively associated with the transaction generator, for notifying a transportation partner of the transaction so that the transportation partner can arrange pick-up and delivery of the commodity.

24. The system of claim 22, further comprising:

a finance interface, operatively associated with the transaction generator, for notifying a credit clearinghouse of the transaction so that the clearinghouse can arrange to receive payment from buyer and make payment to the seller.

25. The system of claim 14, further comprising:

a login interface permitting a user to login to the system as a buyer or a seller, the login interface causing either the buyer interface or the seller interface to be displayed to the user.

26. A computer-usable medium storing a computer program, comprising:

means for displaying a menu for selecting a shipping destination;

means for displaying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, the buyer market prices being adjusted based on the shipping destination;

means for displaying a menu for selecting a shipping origination; and

means for displaying the commodity contracts and corresponding seller market prices for the commodity contracts, the seller market prices being adjusted based on the shipping origination.

27. A computer-based system, comprising:

a buyer screen for displaying a menu for selecting a shipping destination and for identifying one or more commodity contracts and corresponding buyer market prices for the commodity contracts, each of the buyer market prices comprising a best offer and a best bid, wherein the best offer is computed by adding to one or more offers the cost of

shipping between a respective shipping origin and the shipping destination, whereby generating one or more adjusted offers, and then selecting the lowest adjusted offer to be the best offer, wherein the best bid is computed by determining the shipping origin corresponding to the best offer, determining a highest bid available to a seller at the shipping origin, and adjusting the highest bid based on the shipping cost between the shipping origin and the shipping destination to get the best bid;

a seller screen for displaying a menu for selecting a shipping origin and for identifying the commodity contracts and corresponding seller market prices for the commodity contracts, each of the seller market prices comprising a best offer and a best bid, wherein the best bid is computed by subtracting from one or more bids the cost of shipping between a respective shipping destination and the shipping origin, whereby generating one or more adjusted bids, and then selecting the lowest adjusted bid to be the best bid, wherein the best offer is computed by determining the shipping destination corresponding to the best bid, determining a lowest offer available to a buyer at the shipping destination, and adjusting the lowest offer based on the shipping cost between the shipping origin and the shipping destination to get the best offer;

a seller order entry screen for permitting a seller to enter an offer for selling a commodity according to a predetermined contract;

a buyer order entry screen for permitting a buyer to enter a bid for purchasing the commodity; and

an exchange engine for matching the bid to the offer to generate a transaction.

28. The system of claim 27, further comprising:

a delivery interface for notifying a transportation partner of the transaction so that the transportation partner can arrange pick-up and delivery of the commodity.

29. The system of claim 27, further comprising:

a finance interface for notifying a credit clearinghouse of the transaction so that the clearinghouse can arrange to receive payment from buyer and make payment to the seller.

30. The system of claim 27, further comprising:

a login interface permitting a user to login to the system as a buyer or a seller, the login interface causing either the buyer screen or the seller screen to be displayed to the user.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.